

### **Remarks**

Reconsideration and withdrawal of the objections to the specification and rejections of the claims, in view of the amendments and remarks herein, is respectfully requested. Claims 39 and 61 are amended, and claim 62 is added. Claims 29-58 and 61-62 are pending. The amendments are intended to advance the application and are not intended to concede to the correctness of the Examiner's position or to prejudice the prosecution of the claims prior to amendment, which claims are present in a continuation of the present application.

Amended claim 39 is supported by originally-filed claim 39.

Amended claim 61 is supported at page 7, lines 3-20, and page 8, line 26-page 9, line 1 of the specification.

New claim 62 is supported at page 72, line 31-page 73, line 2 of the specification.

The Title, Abstract and Brief Description of Figures 8, 23 and 31-32 are amended, and substitute Figures 7A-B are enclosed herewith. Substitute Figures 23, 31 and 33 with appropriate lettering to correspond to the amended Brief Description of those Figures will be submitted. The Examiner is requested to note that the specification contains a separate description of Figures 7A-B and Figures 41A-F.

The above-referenced substitute SEQUENCE LISTING is filed to conform the above-referenced application to the requirements of 37 C.F.R. §§ 1.821 - 1.825. In accordance with 37 C.F.R. § 1.821(e), a copy of the above-submitted substitute SEQUENCE LISTING in ASCII computer readable form is also submitted on even date herewith to the U.S. Patent and Trademark Office, Mail Stop Sequence Listing, P.O. Box 1450, Alexandria, VA 22313-1450. The contents of the paper version of the substitute SEQUENCE LISTING submitted herewith, and the computer readable form being submitted to Mail Stop Sequence, are the same and do not include new matter.

### **The 35 U.S.C. § 112 Rejections**

The Examiner rejected claims 39-41 and 61 under 35 U.S.C. § 112, second paragraph, as being indefinite for the recitation of "leader sequence." The Examiner also rejected claim 61 under 35 U.S.C. § 112, second paragraph, as being indefinite for multiple recitations of the article "a". The amendments to claims 39 and 61 obviate the § 112(2) rejections.

The Examiner rejected claims 31-41 and 61 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner asserts that no *pikA* promoter is described in the specification. The Examiner is referred to page 75 of the specification where the location of the *pikA* promoter in Figure 31 is described.

The Examiner further rejected claims 36, 39-41 and 61 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner asserts that the specification fails to describe a TEII domain. The Examiner is requested to refer to Figures 29 and 31 (*pikAV* encodes a TEII), and Figures 46C-D (where two TEII genes are described).

Hence, withdrawal of the § 112(1) rejections is respectfully requested.

*The 35 U.S.C. § 102(b) Rejections*

The Examiner rejected claims 31-41 and 61 under 35 U.S.C. § 102(b) as being anticipated by WO 00/00620 (PCT/US99/14398), and claim 31 under 35 U.S.C. § 102(b) as being anticipated by Xue et al. (Proc. Natl. Acad. Sci. USA, 95:12111 (1998)).

As indicated in the substitute Declaration enclosed herewith and page 1 of the specification, as amended herein, the present application claims the benefit of the filing date of U.S. application Serial No. 09/105,537, filed June 26, 1998, and PCT/US99/14398 (A Petition under 37 C.F.R. § 1.78(a)(3) and § 1.78(a)(5) is enclosed herewith). Thus, neither WO 00/00620 nor Xue et al. is § 102(b) prior art to the pending claims.

Accordingly, withdrawal of the § 102(b) rejections is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6959 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date

April 30, 2004

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 30th day of April, 2004.

Name

Dawn M. Pale

Signature

Dawn M. Pale